

AGRICULTURE

DIVISION OF PLANT INDUSTRY

New Jersey Hemp Program

Proposed Readoption with Amendments: N.J.A.C. 2:25

Authorized By: New Jersey State Board of Agriculture and Douglas H. Fisher, Secretary,
Department of Agriculture.

Authority: P.L. 2019, c. 238.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2021-122.

Submit written comments by February 18, 2022, to:

Director, Division of Plant Industry
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The agency proposal follows:

Summary

On December 30, 2019, the New Jersey Department of Agriculture (“Department” or “NJDA”) adopted new rules governing the New Jersey Hemp Farming Act (Act) to license and

promote the cultivation of industrial hemp at N.J.A.C. 2:25. The Act allowed the rules to be effective upon filing for a period of 18 months, and was scheduled to expire on June 30, 2021. Certain rulemaking deadlines and rules set to expire during the Public Health Emergency declared in Executive Order 103 (2020) have been extended until January 1, 2022, pursuant to Executive Order 127 (2021) and P.L. 2021, c. 103. The Department, through the Division of Plant Industry, administers the New Jersey Hemp Farming Act, authorized by N.J.S.A. 4:28-6 et seq. (P.L. 2019 c. 238). As the Department has timely filed this notice of readoption, the chapter expiration date is extended 180 days to May 11, 2022, pursuant to N.J.S.A. 52:14B-5.1. The Department is now proposing the rules for readoption with certain amendments, to make them permanent. The Department has provided a 60-day comment period on this notice of proposal, therefore, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Hemp, formerly called industrial hemp under State and Federal law, comes from the plant *Cannabis sativa L.*, which is a versatile plant. Hemp is a dioecious plant, producing blooms that have only male or female reproductive parts that often appear on separate plants. This plant is generally known for the production of marijuana, but when grown for hemp, it can produce fiber, seed, or oil. Unlike marijuana, hemp does not produce psychoactive effects in users because of the low amounts of THC it produces.

The New Jersey farming community is eager to grow hemp as a new commodity and participate in this burgeoning national marketplace. Additionally, consumers will enjoy increased access to many new products grown and produced locally.

Historically, hemp fibers have been used to manufacture hundreds of products that include twine, paper, construction materials, carpeting, clothing, and animal bedding. Seeds have

been used in making industrial oils, cosmetics, and other personal care products. Hemp seed or oil can be found in cooking oil, salad dressings, pasta, snack products, high-quality lubricating oils, and biodegradable plastics. Hemp also has potential for use as a biofuel.

The cultivation of industrial hemp for research purposes was initially authorized in the Agriculture Act of 2014, 7 U.S.C. § 5940, Legitimacy of Industrial Hemp Research. The law distinguished hemp from marijuana by defining it as “the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis.” Such hemp could only be cultivated by State departments of agriculture or institutions of higher education for research purposes. Despite recognition of the plant’s significantly different applications from marijuana, hemp was still classified as a Schedule I Controlled Substance under Federal law under the Controlled Substances Act, 21 U.S.C. § 801.

To help promote these new hemp programs, Congress passed appropriations bills in 2015, 2016, 2017, and 2018 that included provisions to prevent the DEA from interfering with or obstructing duly authorized industrial hemp programs. In 2016, the DEA, USDA, and the FDA responded by issuing a joint “Statement of Principles” regarding industrial hemp. Specifically, they warned that industrial hemp should not be grown “for the purpose of general commercial activity,” and that “hemp plants and seeds may not be transported across state lines.” These conflicting authorities caused uncertainty regarding the legality of commercial sales and the transport of hemp and hemp products. Nevertheless, many states have established and administered their own industrial hemp programs since 2014, with many engaging in commercial sales of hemp products.

In November 2018, the New Jersey Industrial Hemp Pilot Program was signed into law. The statute authorized the NJDA to promulgate rules regulating the cultivation of industrial hemp in New Jersey for research purposes. Within weeks, Congress passed the Agriculture Improvement Act of 2018, also known as the 2018 Farm Bill (2018 Farm Bill), which made sweeping changes to hemp growth and production. Pub.L. 115-334. The most significant change in the 2018 Farm Bill was that hemp is no longer classified as a Controlled Substance under Federal law. Now, hemp grown within either a State or Federal program can be produced commercially as opposed to being grown for research purposes. State programs must be approved by the USDA.

The Governor and the Legislature made the determination that New Jersey should act promptly with the goal of having New Jersey “move the State and its citizens to the forefront of the hemp industry.” P.L. 2019, c. 238. The new statute, known as the New Jersey Hemp Farming Act was enacted in August 2019. The Act repealed and replaced the New Jersey Industrial Hemp Pilot Program. On October 31, 2019, the USDA published its interim final rules for domestic hemp production in the Federal Register at 7 CFR Part 990. Effective upon publication, the rules required USDA approval of any state program that seeks to have primary regulatory authority over hemp. The USDA’s rules specify provisions that are required in state hemp production plans, including procedures for sampling and testing, disposal of noncompliant hemp, enforcement, and various reports and information sharing with authorities. Accordingly, the Department has established a USDA-approved hemp licensing program in order to promote the cultivation and processing of hemp, develop new commercial markets for farmers and businesses through the sale of hemp products, and promote the expansion of the State’s hemp industry to the maximum extent permitted under Federal law.

This chapter establishes the New Jersey Hemp Program (Program), that is administered by the Division of Plant Industry within the Department. The objective of the Program is to provide licenses for growing, processing, and handling hemp pursuant to the New Jersey Hemp Farming Act, and the 2018 Farm Bill and its implementing rules at 7 CFR Part 990.

The Program establishes a schedule of fees to be paid based upon whether the hemp producer will be growing, processing, or handling hemp. Growers will pay an annual \$300.00 plus \$15.00 per acre fee, handlers will pay a \$450.00 annual fee, and processors will pay an annual fee for each type of hemp component they process. For example, a hemp producer who processes grain (\$450.00) and CBD extract (\$1,000) will pay a \$1,450 annual fee. Growers are permitted to process and handle their own hemp without paying additional fees. However, once a grower processes or handles hemp from at least one separate hemp producer, the grower must pay applicable processor and handler fees.

The primary Federal requirement is to ensure that all hemp grown and processed maintains the appropriate post-decarboxylation delta-9 THC concentration limit of 0.3 percent on a dry weight basis. Additional requirements include, but are not limited to, reporting certain information to the USDA and ensuring compliance with the enforcement provisions of the 2018 Farm Bill. For example, hemp farmers cannot be subjected to adverse criminal law enforcement actions for mere negligent violations, but will instead be subject to a Corrective Action Plan tailored to prevent future violations. However, three negligent violations committed within a period of five years will render a hemp producer ineligible to work in the Program for a period of five years beginning on the date of the third violation. All hemp with a post-decarboxylation delta-9 THC concentration of more than 0.3 percent must be destroyed, but it will only be considered a negligent violation pursuant to this chapter if the hemp has a post-decarboxylation

delta-9 THC concentration of more than 1.0 percent on a dry weight basis. A hemp producer who violates this chapter with a culpable mental state greater than negligence may be subject to criminal law enforcement actions.

The Federal final rule states that hemp with a total THC concentration in excess of 0.3 percent on a dry weight basis will be considered marijuana, and subject to the Controlled Substances Act and DEA rules. Noncompliant hemp must be destroyed in accordance with reverse distributor rules at 21 CFR 1317.15.

The Program establishes reporting requirements throughout the growing season, including pre-planting reports, planting reports, pre-harvest reports, and one annual production report. Hemp producers are required to report hemp crop acreage and other relevant information to the USDA Farm Service Agency annually. The Department is required to provide two reports to the USDA each month. One report will update the status of any hemp producer's license and the other will provide information to the USDA regarding noncompliant hemp violations. The Department will also submit, to the USDA, an annual report regarding total hemp acreage grown and disposed. The reports will ensure that accurate legal descriptions of land and quantities of hemp are maintained that the Department's inspectors can work efficiently when they go to licensed areas, and that all hemp is produced with a total potential delta-9 THC concentration of 0.3 percent or less on a dry weight basis.

Production reports will provide useful information regarding whether certain varieties tend to violate the Federally defined post-decarboxylation THC level for hemp or produce low yields.

The Program also establishes procedures for sampling and testing hemp. Fifteen days prior to the anticipated harvest date, an inspector from the Department or a DEA-registered third-

party lab will collect samples to test for compliance with the Federally defined THC level for hemp. All results are subject to review by the Department, which is authorized to re-test and collect samples, as necessary, to ensure compliance. THC testing procedures must use post-decarboxylation or other similarly reliable methods and must measure total potential delta-9 THC. Test results must show the measurement of uncertainty being utilized and state if a given sample meets the 0.3 percent threshold based on the distribution range established by the measurement of uncertainty. Furthermore, hemp producers must agree to grant entry to the Department onto premises where hemp is grown, processed, or handled for inspection purposes. In addition to individual sampling and testing requirements, the Department will also conduct an annual inspection of, at a minimum, a random sample of hemp producers.

Any person with a criminal conviction relating to controlled substances may not participate in the hemp program for a period of 10 years following the date of the conviction, unless they were already participating in an industrial hemp pilot program and the conviction occurred prior to the passage of the 2018 Farm Bill. To comply with this Federal requirement, all key participants involved in a hemp production operation, including owners, CEOs, and CFOs, must undergo and pass a criminal background check by the New Jersey State Police.

The rules proposed for readoption are summarized as follows:

N.J.A.C. 2:25-1.1 sets forth the authority and general provisions of the chapter.

N.J.A.C. 2:25-1.2 sets forth the definitions used in the chapter.

N.J.A.C. 2:25-1.3 sets forth the confidentiality of records.

N.J.A.C. 2:25-1.4 sets forth the information that must be submitted to the U.S. Secretary of Agriculture.

N.J.A.C. 2:25-2.1 sets forth the annual license application requirements.

N.J.A.C. 2:25-2.2 sets forth the terms and conditions of licensure.

N.J.A.C. 2:25-2.3 sets forth the requirements for institutions of higher education.

N.J.A.C. 2:25-3.1 sets forth the requirements for the acquisition of hemp seeds, propagules, or plantlets.

N.J.A.C. 2:25-3.2 sets forth the requirements pertaining to noncompliant hemp.

N.J.A.C. 2:25-4.1 through 4.5 set forth the reporting requirement for hemp producers.

N.J.A.C. 2:25-5.1 sets forth the right of the Department to enter and inspect properties.

N.J.A.C. 2:25-5.2 sets forth the inspection, sampling, and testing procedures.

N.J.A.C. 2:25-5.3 sets forth the labeling of hemp products by New Jersey Processors.

N.J.A.C. 2:25-5.4 sets forth third-party laboratory compliance requirements.

N.J.A.C. 2:25-6.1, 6.2, 6.3, and 6.4 set forth violations, penalties and appeal rights pursuant to the chapter.

At N.J.A.C. 2:25-1.2, proposed amendments include new definitions that are relevant to THC testing methodology, including “post-decarboxylation” and “total potential delta9-THC.” The definition of “Federally defined THC level for hemp” and “hemp” are proposed for amendment to include any future limit (other than the 0.3 percent of dry weight basis) that is established by Federal law. The definition of “growing area” is replaced to add specificity to the definition and to exclude residential structures, commercial storage units, and community gardens from indoor growing areas. The definition of “hemp product” is proposed for amendment to specifically state that all synthetically derived tetrahydrocannabinols remain Schedule I Controlled Substances. The definition of “THC” is proposed for amendment to delete “delta-9.”

At N.J.A.C. 2:25-1.3, the information considered public is proposed for amendment to include email addresses.

At N.J.A.C. 2:25-2.2(m), the proposed amendment states that all varieties must be separately and clearly marked.

Proposed new N.J.A.C. 2:25-5.3(c) requires floral processors to submit a current Certificate of Analysis and receive Program approval for any out-of-State sourced material.

At N.J.A.C. 2:25-5.4, the proposed amendments require third-party laboratories to submit all results directly to their client, in addition to the Department, and requires the third-party laboratories to take and pass an annual performance test, if requested to do so by the Department.

At N.J.A.C. 2:25-6.1, consistent with changes to the USDA's rules, the standard concentration is raised from 0.5 percent to 1.0 percent delta-9 THC concentration before a violation can be considered "negligent."

Social Impact

The rules proposed for readoption with amendments at N.J.A.C. 2:25 will have a positive social impact. Continued implementation of the rules will be beneficial to licensees who grow and process hemp, and local consumers will have increased access to these hemp products.

Economic Impact

The rules proposed for readoption with amendments at N.J.A.C. 2:25 will have a positive economic impact on the State. By maintaining appropriate oversight of the Program to ensure licensees are growing hemp instead of marijuana, their products can be sold across the nation

while avoiding potential criminal liability. Licensees will also be less likely to grow, or process, hemp or hemp products with a THC concentration too high to be sold or consumed, in accordance with State and Federal laws, requiring their products to be recalled and resulting in further damages.

Hemp growers will pay license fees of \$300.00 plus \$15.00 per acre annually. Each type of processing costs a predetermined amount - grain and/or fiber processors must pay \$450.00 annually, and processors must also pay \$1,000 annually for floral, hemp oil, and CBD processing. Handlers pay \$450.00 annually.

Federal Standards Statement

The rules proposed for readoption with amendments are authorized by the New Jersey Hemp Farming Act and have been drafted to comply with the 2018 Farm Bill, Pub.L. 115-334, and its implementing rules at 7 CFR Part 990. The 2018 Farm Bill now makes hemp legal to grow anywhere in the United States, as long as it is grown under the auspices of a state-run program or under the USDA's program. The 2018 Farm Bill anticipates and allows state-run programs to be more restrictive than the Federal standards.

The USDA published its interim final rules for domestic hemp production on October 31, 2019. The USDA's final rules became effective on March 22, 2021. New Jersey was one of the first three states to receive approval from the USDA prior to implementing the hemp program.

Some provisions of the Department's new rules exceed the Federal standards. N.J.A.C. 2:25-2.2 requires a site modification fee any time a growing site is altered or added to an existing license. This is necessary to ensure the Department can submit accurate records to the USDA, which must be kept apprised of the status of all hemp producers and have accurate legal descriptions of all land being used to produce hemp.

N.J.A.C. 2:25-2.2 prohibits direct and unsupervised public access to hemp, such as hemp mazes or any other recreational activity. The Department deems these measures necessary to prevent members of the public from having unauthorized access to plants and seeds that could be used to cultivate hemp in violation of this chapter.

N.J.A.C. 2:25-3.2 allows the Department to prohibit any hemp, seeds, plantlets, or propagules for use in the Program for any reason. If the Department determines that any particular strain or source for hemp is unreliable, the strain or source may be prohibited in order to protect the integrity of the Program. Hemp farmers will suffer financial losses for every non-compliant field they must destroy, so it is more efficient to prevent non-compliant hemp from being planted. If non-compliant hemp is processed into foodstuffs, it could result in Statewide or nationwide recalls.

While the rules regarding violations generally match the Federal standards, the Department includes additional negligent violations, such as the failure to submit timely reports and unresponsiveness to Departmental requests. Negligent violations and corrective action plans are described in detail at N.J.A.C. 2:25-6. Negligent violations include producing *Cannabis sativa L.* with a post-decarboxylation delta-9 THC concentration of more than 1.0 percent on a dry weight basis, failing to provide a legal description of the land on which hemp is produced, and failing to obtain necessary authorizations pursuant to the Program. Hemp producers who have committed a negligent violation are required to adhere to a Corrective Action Plan, which includes requirements to set a reasonable date by which the hemp producer shall correct the negligent violation, and to submit reports detailing compliance measures for a period of two years. If the Department finds that other infractions are serious enough, a hemp producer may still be placed on a Corrective Action Plan. If three separate negligent violations occur within a

five-year period, a license shall be revoked, and the hemp producer will be ineligible to work in the program for a period of five years from the date of the third violation. However, the Department may also issue warnings that do not count toward the Federally mandated limit of three violations. Any person who materially falsifies any information in an application will be ineligible to participate in the Program.

The rules proposed for readoption with amendments otherwise match Federal standards, including those related to maintenance of information, provision of required information to USDA, a procedure for testing for THC, disposal of noncompliant hemp, imposition of violations, and the conduct of annual inspections.

Jobs Impact

The Department does not anticipate a significant increase in jobs in the short term, as many licensees are existing farmers who are adding hemp to the variety of crops they grow annually. However, there is significant long-term potential growth for jobs in the State, especially from the hemp processing sector.

Agriculture Industry Impact

The rules proposed for readoption with amendments at N.J.A.C. 2:25 will have a positive impact on the agriculture industry in the State. The chapter gives New Jersey farmers the opportunity to grow a new crop in a growing sector of the economy. There is a high demand for hemp products nationwide, including various products made from the seeds and CBD oils. This chapter is necessary, as the NJDA would not be granted oversight of the Program by the USDA without them.

Regulatory Flexibility Analysis

Most hemp licensees qualify as “small businesses” as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are significant recordkeeping requirements under this Program due to the Federal rules at 7 CFR Part 990, including pre-planting reports, planting reports, harvest/disposal reports, production reports, and acreage reports (which must be submitted directly to the Farm Service Agency).

These reports are all necessary to comply with the stringent standards required by Federal rules to ensure that hemp is grown within the acceptable THC limit. All licensees, whether they are small businesses or not, must comply with these requirements or they will not be permitted to hold a license. Without appropriate oversight and recordkeeping, the USDA would not permit the NJDA to oversee the hemp program. Furthermore, hemp crops and products that are found to be above the acceptable THC limit must be destroyed, which becomes more costly if mistakes are not discovered early in the growing season. The recordkeeping and reporting requirements are not costly, as licensees typically engage in direct oversight of their programs and can complete the required forms, which are fairly simple. The requirements, thus far, apply to 53 growers, 15 processors, and three handlers for the year 2021.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules apply to commercial hemp growing operations. Therefore, no further analysis is required.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments would impose an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules apply to commercial hemp growing operations. Therefore, no further analysis is required.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The rulemaking will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles or adults in the State. Therefore, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:25.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

2:25-1.2 Definitions

As used in this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

...

“Decarboxylated” means the completion of the chemical reaction that converts THC-acid (THC-A) into delta-9 THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9 THC and 87 and seven-tenths [(87.7)] percent (**.877**) of THC-acid.

...

“Federally defined THC level for hemp” or “acceptable hemp THC level” means a **post-decarboxylation** delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis for hemp or in a hemp product, **or any other limit established by Federal law, rules, or regulations**. Hemp will satisfy the standard of “Federally defined THC level for hemp” or “acceptable hemp THC level” if laboratory testing confirms a result within a measurement of uncertainty that includes the THC concentration level of 0.3 percent. For example, if the reported **total potential** delta-9 THC content concentration in a sample is 0.35 percent, and the measurement of uncertainty is +/- 0.099 percent, the hemp would be compliant, because 0.3 percent falls within the distribution range between .251 percent and .449 percent.

...

[“Growing area” means either an outdoor or enclosed indoor area where hemp is cultivated.]

“Growing area” means any outdoor or indoor area used for cultivation in a natural, rural, or non-densely populated suburban area that is a minimum of 1.0 contiguous acre (outdoor) or a minimum .25 acre (indoor) actively being used in hemp production. Indoor growing areas will not be allowed in residential structures, commercial storage units, or community gardens.

...

“Hemp” means the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a **post decarboxylation** delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent, **or the current Federally acceptable hemp THC level**, on a dry weight basis. Hemp and hemp-derived cannabinoids, including cannabidiol, shall be considered an agricultural commodity and not a controlled substance due to the presence of hemp or hemp-derived cannabinoids.

...

“Hemp product” means a finished product with a **post decarboxylation** delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent that is derived from or made by processing a hemp plant or plant part and prepared in a form available for commercial sale. The term includes cosmetics, personal care products, food intended for human or animal consumption, cloth, cordage, fiber, fuel, paint, paper, particleboard, plastics, and any product containing one or more hemp-derived cannabinoids, such as cannabidiol. Hemp products shall not be considered controlled substances due to the presence of hemp or hemp-derived cannabinoids. **All synthetically derived tetrahydrocannabinols remain Schedule I Controlled Substances pursuant to U.S. Drug Enforcement Agency rules and are not allowable for production.**

...

“Post-decarboxylation,” in the context of testing methodologies for THC concentration levels in hemp, means a value determined after the process of decarboxylation that determines the total potential delta-9 tetrahydrocannabinol content derived from the sum of the THC and THC-A content and reported on a dry weight basis.

The post-decarboxylation value of THC can be calculated by using a chromatograph technique using heat and gas chromatography, through which THC-A is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The post-decarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THC-A intact, and requires a conversion calculation of the THC-A to calculate total THC in a given sample.

...

“THC” means [delta-9] tetrahydrocannabinol, which is a psychoactive component in cannabis plants.

“Total potential delta-9 THC” means the total potential delta-9 THC concentration levels in hemp, determined after the process of decarboxylation. It is derived from the sum of the (delta-9 THC) + (THCA * 0.877) and reported on a dry weight basis.

...

2:25-1.3 Records designated as confidential

In addition to records designated as confidential pursuant to the provisions of the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., and any other law, rule, or Executive Order; the license application, supporting documentation, filed hemp producer reports, or any testing results shall not be considered government records subject to public access pursuant to OPRA. The only information that shall be considered public shall be the hemp producer’s name, **email address**, and mailing address.

SUBCHAPTER 2. ANNUAL APPLICATION FOR LICENSE

2:25-2.2 Terms and conditions of licensure

(a) – (k) (No change.)

(l) Licenses shall not be assigned or transferred **to any other individual, business, or company** under any circumstances.

(m) No hemp plant shall be moved to, or grown, in an area other than the licensed growing area, without prior Departmental approval, and subject to a site modification fee pursuant to (r) below.

All varieties must be separated and clearly marked.

(n) – (w) (No change.)

SUBCHAPTER 5. INSPECTION, SAMPLING, AND TESTING

2:25-5.2 Inspection, sampling, and testing procedures

(a) (No change.)

(b) Test procedures shall be as follows:

1. – 2. (No change.)

3. Test results must confirm that the final product batch contains no more than 0.3 percent **total potential** delta-9 THC on a dry weight basis using a measurement of uncertainty; and all such testing results must be retained by the participant and made available to the Department upon demand for a minimum of three years. Any material having more than the Federally defined THC level for hemp is prohibited. Possession or distribution of such products may be subject to Federal, State, and local law enforcement action;

4. – 5. (No change.)

6. A sample test result with a **total potential** delta-9 THC concentration on a dry weight basis greater than the Federally defined THC level for hemp shall be conclusive evidence that the

lot represented by the sample contains a **total potential** delta-9THC concentration on a dry weight basis of more than 0.3 percent and that the hemp producer is therefore not in compliance with this chapter. Upon receipt of a failing test result, the Department may request resampling and retesting of the varieties in question. Upon subsequent retesting failure, the Department shall determine whether the failure constitutes a negligent violation or a violation with a culpable mental state greater than negligence and take appropriate action pursuant to N.J.A.C. 2:25-6;

7. – 10. (No change.)

2:25-5.3 Labeling of hemp products by New Jersey processors

(a) – (b) (No change.)

(c) New Jersey floral processors shall submit a current Certificate of Analysis (COA) and receive program approval for out-of-State-sourced material prior to importation and acceptance to verify compliance with the Federally acceptable hemp THC level.

2:25-5.4 Third-party laboratory compliance

(a) – (b) (No change.)

(c) Third-party laboratories shall:

1. – 3. (No change.)

4. Transmit laboratory results directly **to their client and to the Department for all licensed New Jersey processors and growers submitting regulatory samples, in order to receive final Departmental approval; [and]**

5. Submit to random quality assurance testing by the Department to validate the accuracy of testing results[.]; **and**

6. Take and pass an annual performance test, if requested by the Department, to ensure the accuracy of their testing methods.

(d) (No change.)

SUBCHAPTER 6. VIOLATIONS, PENALTIES, AND APPEALS

2:25-6.1 Negligent violations

(a) (No change.)

(b) Negligent violations may include, but are not limited to:

1. – 2. (No change.)

3. Producing *Cannabis sativa L.* with a delta-9 THC concentration of more than [0.5] **1.0** percent on a dry weight basis **or any revised limit established at 7 CFR Part 990**, or failing to make reasonable efforts to grow compliant hemp; and/or

4. (No change.)

(c) – (g) (No change.)